

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Leona R. Jacobs,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1747
Parcel No. 170/00421-419-000

On September 7, 2010, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Leona R. Jacobs, requested that her appeal be considered without hearing and submitted evidence to support her claim. She was self-represented. The Board of Review designated Assistant County Attorneys, Ralph E. Marasco, Jr. and David Hibbard, as its legal representatives. It also submitted documentary evidence in support of its decision. The Appeal Board now having examined the entire record, and being fully advised, finds:

Findings of Fact

Leona R. Jacobs, owner of property located at 2400 NE 72nd Street, Altoona, Iowa, appeals from the Polk County Board of Review decision reassessing her property. According to the property record card, the subject property consists of a one-story dwelling having 4094 total square feet of living area, and no basement. The property is also improved by a 296 square-foot open porch, has a 180 square-foot deck, and an attached 1008 square-foot three-car garage. The dwelling was built in 2005, has 400 square feet of veneer area, and has a 2+05 quality grade classification. It has two, 320 square-foot, detached single-car garages and is situated on a 2.455 acre site. The real estate was

classified as residential on the initial assessment of January 1, 2009, and valued at \$382,700, representing \$44,900 in land value and \$337,800 in dwelling value.

Jacobs protested to the Board of Review on the ground the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(b); there is an error in the assessment under section 441.37(1)(d); and there is a downward change in value under sections 441.37(1) and 441.35. The error claim was that the property was not assessed at market value and the downward change was based on lowered value caused by market conditions. These two claims essentially assert over-assessment. She requested a reduction in assessment to \$307,938.92. The Board of Review granted the protest, in part, stating, "The assessed value of this property was changed in order to correct a clerical or listing error in the assessment." The assessment was reduced to \$373,700, representing \$44,900 in land value and \$328,800 in building value.

Jacobs filed her appeal with this Board and urged the grounds of equity, over-assessment, error and downward change in value. She also indicated in her statement the Board of Review failed to use sales information of like properties recently sold which are near her property, used an incorrect method for valuing the property and failed to take into account the affect of a gas easement on the property's use. Jacobs seeks a reduction to a total assessment of \$331,335, representing \$35,000 in land value and \$296,335 in improvement value.

We note in a reassessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change separately and consider this claim as a claim of over-assessment. Jacobs did not raise an equity claim before the Board of Review, therefore, it can not be considered by this Board. Since Jacobs' claim of error essentially states the property is assessed for more than its market value, we consider her appeal only on the ground of over-assessment.

Jacobs relies on the sale of a one-story 3120 square foot property which sold for \$254,000 September 15, 2008, and is located adjacent to her residence. Jacobs calculates a \$69 per square foot sales price on this property; however, the sales information indicates a sale price of \$81.41 per square foot. The subject property is assessed at \$91.28 per square foot. She reports it was built by the same builder as hers. This property has a significantly smaller site (66,342 square feet less) and is 974 square feet smaller than the subject property. It is several years older than Jacobs's residence and has a lower quality grade.

Jacob reports the shape of her lot requires a 300-foot access road to approach her dwelling and the utility easement makes 25,200 square feet of her lot not suitable for development or other use. She identifies three nearby lots in a range of approximately 40,000 to 48,000 square feet that are assessed between \$36,500 and \$39,600. Given the fact Jacobs property is almost triple the size of these lots, even considering the easement area, her \$44,900 land assessment does not appear inconsistent with surrounding land values.

In Jacobs' opinion, the cost of construction for a ranch home is \$67.54 per square foot up to 2400 square feet, and \$35.00¹ for additional square feet. These figures are unrealistic according to the Board of Review analysis. The cost report provided does use \$67.54 per square foot for the 4094 square feet of living area in the subject property. However, this is a base cost before neighborhood and market adjustments, and reductions for physical depreciation and obsolescence.

The certified record contained a comparison of the subject property and two other NE 27th street dwellings; however, one was a 1.5-story and the other a 2-story dwelling. Both have basements, are older, have lower quality grades, smaller sites, and neither have detached structures. Adjustments were made for these differences. We question whether these properties are comparable to the subject, and give limited consideration to the analysis.

¹ Jacobs arrived at this figure by using the mid-point between what she believed to be basement finish cost and upper living area cost.

Cris Swaim of Swaim Appraisal Service, Inc., West Des Moines, Iowa, completed an appraisal of the subject property for the Board of Review. He completed an interior inspection on August 9, 2010. Swaim described the subject neighborhood as consisting of small acreage properties and farmland in the Altoona and Pleasant Hill area. Swaim noted the utility easement for a gas line running on the north side of the lot and a shared driveway easement allowing access to the home. He reported good quality construction and upgraded materials. He believed the property is unique due to its lack of basement and excessive gross living area. The property is serviced by LP gas and a private septic system.

Swaim developed the sales approach to value concluding an opinion of \$310,000 as of January 1, 2009. He used four sales from the northeast area of the county which he believed represent the largest ranch homes and the best available 2008 sales. Adjustments were made for differences in lot size, age, gross living area, decks, porches, garages, fireplaces, and outbuildings. Large adjustments were made for basements and basement finish. The most similar comparable was built by the same builder as the subject. The sale was an REO;² however, did not have the appearance of being distressed. Swaim adjusted the sale price by 10% to account for the REO sale condition. His final opinion of value as of January 1, 2009, is \$310,000.

Reviewing all the evidence, we find a preponderance of evidence supports Jacobs' contention her property is over-assessed. We find the Swaim appraisal is the most credible evidence of the fair market value on the January 1, 2009, assessment date.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act

² REO is a class of property owned by a lender, typically a bank, after an unsuccessful sale at a foreclosure auction.

apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

We find the Swaim opinion of value supports the claim the property is over-assessed. Further, we rely on his appraisal as the most credible evidence of the subject property's fair market value as of the assessment date.

Viewing the evidence as a whole, we determine the preponderance of the evidence supports Jacobs' claim of over-assessment as of January 1, 2009. We, therefore, modify the Jacobs property assessment as determined by the Board of Review. The Appeal Board determines that the property

assessment value as of January 1, 2009, is \$310,000, representing \$44,900 in land value and \$265,100 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Polk County Board of Review is modified to \$310,000, representing \$44,900 in land value and \$265,100 in dwelling value.

Dated this 4 day of October 2010.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Richard Stradley
Richard Stradley, Board Member

Karen Oberman
Karen Oberman, Board Chair

Copies to:
Leona R. Jacobs
2400 NE 72nd Street
Altoona, IA 50009
APPELLANT

Ralph E. Marasco, Jr./David Hibbard
Assistant Polk County Attorney
111 Court Avenue, Room 340
Des Moines, IA 50309-2218
ATTORNEY FOR APPELLEE

Jamie Fitzgerald
Polk County Auditor
120 2nd Avenue
Des Moines, IA 50309

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-4</u> , 201 <u>0</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>